

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,150

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare finding that she has been overpaid benefits. She also appeals the refusal of the Department to increase her Food Stamp benefits based on the amounts being recouped from her ANFC income.

FINDINGS OF FACT

1. The petitioner received a notice on or about May 6, 1993, that she had been determined to have been overpaid \$1,490.00 in ANFC benefits based on benefits which she received during the pendency of a fair hearing appeal which was subsequently decided in favor of the Department. (See Fair Hearing No. 11,390 which is attached hereto.)
2. The petitioner, who is represented by an attorney in this matter (and was represented by the same attorney in Fair Hearing No. 11,390), does not claim that she is surprised by the overpayment finding or that the amounts are incorrect. Neither does she complain of the recoupment amount which she has negotiated with the Department (\$10.00 per month). Rather she complains that the recoupment is erroneous because the basis of the Board's decision in Fair Hearing No. 11,390 is erroneous. She argues that her case is distinguishable from the facts in Bowen v. Gilliard, 483 U.S. 587, 97 L.Ed. 2d. 485, 107 S.Ct. 3008 (1987) cited in that decision. She requested, and was granted, time to file a written brief laying out her argument but failed to make such a filing without explanation.
3. The petitioner also appealed because \$25.00 in additional public assistance income she now receives is counted when computing her Food Stamps. She argued that given her difficult circumstances she should not suffer any further reductions in benefits. She says that using the \$25.00 in income amounts to a \$7.00 per month loss in Food Stamp benefits.

ORDER

The Department's decision on both the ANFC overpayment and Food Stamp calculation is affirmed.

### REASONS

The Department's regulations governing the ANFC program require that amounts paid pending a fair hearing resolved in favor of the Department must be considered an overpayment and are subject to recoupment rules. See W.A.M. § 2234.2 The petitioner does not appear to take issue with this fact or with the recoupment amount which she has negotiated. The petitioner's sole complaint is that the Board's decision in Fair Hearing No. 11,390 finding that her ANFC benefits were properly reduced is erroneous. Although more argument on exactly how the Board was in error was promised, it were never provided.

Even if the petitioner had spelled out the grounds for her argument, it is not appropriate for the Board to consider the validity of its prior decision in this context. If the petitioner had an argument with the correctness of that decision, the appropriate route is appeal to the Supreme Court within 30 days after the decision issued or to request reconsideration of that decision for good cause shown. The Board has specifically held on prior occasions that res judicata concepts prevent it from reconsidering a legal issue raised by a petitioner, which has already been argued and decided in the context of a subsequent overpayment decision (Fair Hearing No. 7579). Overpayment decisions automatically follow all decisions in favor of the Department where the petitioner has requested continuing benefits. If the underlying original decision were not binding on the Board, each case would in essence be tried twice on the same legal issues. Although the petitioner is apparently still dissatisfied with the original decision (Fair Hearing No. 11,390) upholding the Department's reduction action, she had ample opportunity to challenge that decision in the original action. She has advanced no argument as to why the original decision should not stand.

Under the Food Stamp regulations, "household income shall mean all income from whatever source excluding only items specified" elsewhere in the statute. F.S.M. § 273.9. Income from public assistance payments is specifically included as unearned income in the regulations. F.S.M. § 279.9(b)(2)(i). As such, income to her household must be counted in calculating the amount of her Food Stamp benefits, regardless of the difficulty of her situation. The petitioner should be aware, if she is not already, that the Department does not count the money which is recouped from her ANFC as income and that the recoupment should result in an increased Food Stamp amount which may make up for a large part of the recoupment loss. See F.S.M. § 273.9(b)(5)(i).

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